

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ROBERT ROSS,

Plaintiff,

v.

AT&T MOBILITY, LLC,

Defendant.

CASE NO. 4:19-CV-06669 (JST)

**[PROPOSED] ORDER GRANTING AT&T
MOBILITY LLC'S MOTION TO DISMISS
THE COMPLAINT**

*[Notice of Motion and Motion and
Memorandum of Points and Authorities
filed concurrently herewith]*

Action Filed: October 17, 2019

Date: February 5, 2020
Time: 2:00 p.m.
Place: 1301 Clay Street, 2nd Floor
Courtroom 6
Oakland, CA 94612
Judge: Hon. Jon S. Tigar

1 This matter is before the Court on Defendant AT&T Mobility LLC's ("AT&T") Motion to
2 Dismiss Plaintiff Robert Ross's complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

3 Good cause appearing, IT IS HEREBY ORDERED that:

4 1. AT&T's Motion is **GRANTED** in its entirety on the grounds that Mr. Ross has not
5 sufficiently alleged proximate causation for any of his claims. Any causal connection between AT&T's
6 conduct and Mr. Ross's alleged harm is broken by the independent and intervening criminal acts of
7 others. *Martinez v. Pac. Bell*, 225 Cal. App. 3d 1557, 1565 (1990).

8 2. In addition, Mr. Ross's claims are dismissed on the following grounds:

- 9 a. Mr. Ross fails to state a claim for relief as to Count III (Right to Privacy under the
10 California Constitution) because (1) he did not plead a serious invasion of a protected
11 privacy interest, and (2) he did not provide enough factual allegations to conclude that
12 he had a protected privacy interest in the allegedly disclosed information. *See Low v.*
13 *LinkedIn Corp.*, 900 F. Supp. 2d 1010, 1024–25 (N.D. Cal. 2012); *In re Yahoo Mail*
14 *Litigation*, 7 F. Supp. 3d 1016, 1039 (N.D. Cal. 2014).
- 15 b. Mr. Ross fails to state a claim for relief as to Counts IV and V (Negligence and
16 Negligent Entrustment and Supervision) because the economic loss doctrine bars those
17 claims. *Body Jewelz, Inc. v. Valley Forge Ins. Co.*, 241 F. Supp. 3d 1084, 1091–94
18 (C.D. Cal. 2017).
- 19 c. Mr. Ross fails to state a claim for relief as to Count VI (Violation of the California
20 Consumer Legal Remedies Act [Cal. Civ. Code § 1750, *et seq.*]) because (1) he did not
21 plead actual reliance on any representation by AT&T; and (2) all the alleged
22 misrepresentations occurred after Mr. Ross's transaction with AT&T. *See, e.g.,*
23 *Backhaut v. Apple, Inc.*, 74 F. Supp. 3d 1033, 1047–48 (N.D. Cal. 2014); *Moore v.*
24 *Apple, Inc.*, 73 F. Supp. 3d 1191, 1201 (N.D. Cal. 2014).
- 25 d. Mr. Ross fails to state a claim for relief as to Count VII (Violation of the Computer
26 Fraud and Abuse Act) because he did not plead that he suffered a qualifying loss. *See*
27 18 U.S.C. § 1030(c)(4)(A)(i)(I); *DocMagic, Inc. v. Ellie Mae, Inc.*, 745 F. Supp. 2d
28 1119, 1150 (N.D. Cal. 2010).

1 3. This Court also dismisses Mr. Ross's request for punitive damages because the
2 complaint includes no factual allegations suggesting that (1) AT&T acted with fraud, malice, or
3 oppression or (2) any officer director, or agent of AT&T committed, ratified, or authorized the alleged
4 conduct. *Cruz v. HomeBase*, 83 Cal. App. 4th 160, 167 (2000); *Brousseau v. Jarrett*, 73 Cal. App. 3d
5 864, 872 (1977).

6
7
8 **IT IS SO ORDERED.**

9
10 DATED: _____, 2020

The Honorable Jon S. Tigar
UNITED STATES DISTRICT JUDGE

11
12 103597654.1
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28